

SUBJECT: Providing licensees copy of complaints to Board of Podiatric Examiners

COMMITTEE: Public Health — favorable, with amendment

VOTE: 6 ayes — Gray, Coleman, Delisi, Glaze, Maxey, Uresti

0 nays

3 absent — Capelo, Hilderbran, McClendon

WITNESSES: For — Mark Hanna, Carl Soloman, D.P.M., Texas Podiatric Medical Association

Against — None

BACKGROUND: The Board of Podiatric Examiners licenses and regulates podiatrists. State law requires the board to maintain an information file about each complaint filed and to notify the parties to the complaint at least quarterly of the status of the complaint process, unless such notification would jeopardize an undercover investigation.

Standard statutory provisions for all state licensing boards generally require the boards to:

- ! maintain a file on each written complaint;
- ! provide to the person filing the complaint and to each person subject of a complaint a copy of the board's policies and procedures relating to complaint investigation and resolution; and
- ! at least quarterly notify the complainant and the subject of the complaint about the status of the investigation, unless such notification would jeopardize an undercover investigation.

DIGEST: HB 1420, as amended, would require the Board of Podiatric Examiners to provide a license holder with a copy of a written complaint filed about that license holder. The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.

**SUPPORTERS  
SAY:**

HB 1420 is needed to inform podiatrists of the charges leveled against them, to protect the records and reputations of good, lawfully practicing podiatrists, and to prevent filing of frivolous complaints. Forwarding copies of written complaints to license holders is a common practice of licensing boards, such as the Board of Dental Examiners, but the Board of Podiatric Examiners refuses to do this.

Protecting the identity of complainants is not an issue. The podiatrists who are subjects of complaints already can identify most complainants because of the board's investigations of podiatrists' records. Podiatrists would not alter their records to refute allegations, nor would they retaliate against complainants, because such actions would be detected easily and the podiatrists would be subject to severe disciplinary actions.

Also, health-care entities, including managed-care entities, can call the board to find out about a podiatrist's practice performance. Current law requires the board to report all complaints to these entities, even though some complaints may be unfounded or may not have resulted in punitive actions. Managed-care entities sometimes refuse to admit to their networks podiatrists who have had complaints leveled against them, even though the board also routinely provides information concerning the disposition of each complaint and offers to discuss the complaint with representatives of the inquiring health-care entities.

Records of complaints and investigations should not be expunged because that could destroy important evidence that might be needed to identify a pattern of practice problems. When taken alone, such evidence may be inconclusive, but when viewed later as a whole, it may help reveal unlawful practices. If podiatrists want to counter the problem of complaint reporting to managed-care entities, the board's reporting requirements could be amended to authorize only the reporting of valid complaints or complaints in which violations were found.

**OPPONENTS  
SAY:**

HB 1420, by requiring the board to send license holders copies of written complaints, would allow unscrupulous podiatrists to alter records to refute the complainants' allegations before the board's investigation and would impede seriously the board's ability to hold podiatrists accountable. The board should not have to send the license holder a copy of the complaint until after the case is investigated.

Sending copies of written complaints is *not* standard practice among licensing boards. For example, the Board of Medical Examiners keeps complaints confidential and sends license holders only a notice that a complaint has been filed and a copy of the board's policies and procedures.

OTHER  
OPPONENTS  
SAY:

The provisions of this bill should not be limited to podiatrists. Other licensed practitioners could benefit from these kinds of measures.

The board also should have to expunge from the license holder's file all complaints in which the license holder was found not to have violated state laws or rules and any information obtained by the board in the investigation of the complaint. This would protect good podiatrists from incorrect suggestions or implications in their records that they had practiced in an unlawful or questionable manner.

NOTES:

The committee substitute removed from the original bill a section that would have required the board to expunge from the license holder's file all complaints in which the license holder was found not to have violated state laws or rules and any information obtained by the board in the investigation of the complaint.